DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/09/07, 12/07/07 has been entered.

Response to Amendment

There is no change to the claim language of claim 24. The status modifier for claim 24 should accordingly read as "(Previously Presented)."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Rygiel (U.S. Patent No. 6,237,294 B1).

Regarding claim 1, Rygiel discloses a liner (Figure 10) capable of lining a window well, consisting of a flexible first side (12) with a three-dimensional pattern (11)

protruding therefrom; a flexible second side that is substantially flat and configured to contact a window well; and wherein the first side (12) comprises a pattern of artificial rock-shaped protrusions (11) extending therefrom.

Regarding claims 5 and 6, Rygiel discloses the liner as discussed above and further discloses that the liner is capable of being secured with screws to a window well or any other supporting structures and wherein the screws are configured to pass through the liner and into a proud section of a window well or any other supporting structure.

Claims 1, 3, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Dungl (U.S. Patent No. 4,329,981).

Regarding claim 1, Dungl discloses a liner (Figure 4) capable of lining a window well, consisting of a flexible first side (1) with a three-dimensional pattern (4) protruding therefrom; a flexible second side that is substantially flat and configured to contact a window well; and wherein the first side (1) comprises a pattern of artificial rock-shaped protrusions (4) extending therefrom.

Regarding claim 3, Dungl further discloses that the liner is comprised of polyurethane (Col 4, Ln 19-25).

Regarding claims 5 and 6, Dungl discloses the liner as discussed above and further discloses that the liner is capable of being secured (due to being composed of polyurethane foam) with screws to a window well or any other supporting structures and

wherein the screws are configured to pass through the liner and into a proud section of a window well or any other supporting structure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rygiel in view of Scott et al. (U.S. Patent No. 5,268,137).

Regarding claim 3, Rygiel discloses the structure discussed above, but does not disclose that the liner is comprised of polyurethane.

Scott et al. discloses a flexible liner that is comprised of polyurethane (Col 6, Ln 13-19) to provide a material what would not easily break when bent or handled.

It would have been obvious to a person having ordinary skill in the arts at the time of the Applicant's invention to modify the structure of Rygiel to be composed of polyurethane as taught by Scott et al. to provide a more pliable material that is less susceptible to breakage. Moreover, it would have been obvious to one having ordinary skill in the art at the time of invention to use polyurethane, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice and it would

provide a liner with increased flexibility. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Regarding claims 21 and 22, Rygiel discloses a panel/liner of a single flexible sheet having a first side (312) and a second side, wherein ornamental protrusions (11) extend from the first side; paint disposed over the first side (Col 8, Ln 53-56); and the second side is substantially free of protrusions (Col 25, Ln 66) and wherein the second side is configured to couple directly to a window well, but does not explicitly disclose that the sheet is made of polyurethane nor that the paint is alkyd paint.

Scott et al. discloses a flexible liner that is comprised of polyurethane (Col 6, Ln 13-19) to provide a material what would not easily break when bent or handled.

Alkyd paint is a common oil-based paint that bonds well to a variety of surfaces.

It would have been obvious to a person having ordinary skill in the arts at the time of the Applicant's invention to modify the structure of Rygiel to be composed of polyurethane as taught by Scott et al. to provide a more pliable material that is less susceptible to breakage. Moreover, it would have been obvious to one having ordinary skill in the art at the time of invention to use polyurethane for the liner sheet as well as alkyd paint, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice and it would provide a polyurethane liner with increased flexibility and alkyd paint that can better bond to surfaces. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Claims 7-9, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rygiel (U.S. Patent No. 6,237,294 B1) in view of Groves (U.S. Patent No. 5,647,154) and Poole (U.S. Patent No. 6,484,455 B1).

Regarding claim 7, Rygiel in Figure 3 of Figure 10 discloses a single sheet flexible liner having a three-dimensional pattern used to decoratively cover a variety of surfaces and adaptable to a variety of sizes.

Rygiel does not disclose that the liner is secured directly to an inside surface of a window well shield without an intermediate mold, that is coupled directly to a home.

Groves in Figure 5 discloses a single sheet window well liner (36) secured directly to an inside surface of a window well shield (34) without an intermediate mold, wherein the liner is adaptable to a variety of window shields.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the Applicant's invention to use the flexible decorative liner of Rygiel in a window well, wherein the liner is secured directly to an inside surface of a window well shield without an intermediate mold as taught by Groves in order to provide a decorative covering to an otherwise plain or unsightly window well shield.

Furthermore is old and well known in the art that window well shields are directly coupled to a home as exemplified by Poole who discloses a window well shield (10) that is directly coupled to a home (52).

It would have been obvious to a person having ordinary skill in the arts at the time of the Applicant's invention modify the well shield of Grove to be directly coupled to a home as taught by Poole to rigidly secure the window well shield.

Regarding claim 8, Rygiel already modified by Groves and Poole discloses the structure discussed above, but does not disclose that the liner is comprised of polyurethane.

It would have been obvious to one having ordinary skill in the art at the time of invention to use polyurethane, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice and it would provide a liner with increased flexibility. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960)

Regarding claim 9, Rygiel in Figure 10 already modified by Groves and Poole further discloses that the pattern is a series of round and elliptically shaped rocks. Furthermore, it has been held that "matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art." *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947). Providing round and elliptical three-dimensional pattern on a surface is an aesthetic design change (i.e., ornamentation only) provided to suit a given consumer's need and that would require only ordinary skill in the art.

Regarding claim 10, Rygiel in Figure 3 already modified by Groves and Poole further discloses that the pattern is a series of generally rectangular shaped rocks.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rygiel in view of Groves and Poole as applied to claim 7 above, and further in view of Bryant et al. (US 2004/0035063).

Regarding claim 11, Rygiel already modified by Groves and Poole disclose the structure discussed above but does not disclose that the window well liner is secured to the window well via screws, which pass through the liner and into a proud section of the window well. However, the use of screws to fasten two abutting structures is old and well known in the art. Nonetheless, Bryant also discloses that the window well shield (102) is secured to a window well (104), with screws (210) that pass through the liner (106, 114) and into a proud section of the window well (104). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the Applicant's invention to modify the window well of Rygiel already modified by Groves and Poole to further include screws, which pass through the liner and into a proud section of the window well as taught by Bryant to provide a more stable and secure fastening means.

Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemerer et al. (U.S. Patent No. 4,290,248).

Regarding claims 21 and 22, Kemerer et al. in Figure 18 discloses a panel/liner of a single flexible polyurethane sheet (Col 14, Ln 49-57, Col 17, Ln 58-62) having a first side (302) and a second side (the surface on the back side of 302), wherein ornamental protrusions (300) extend from the first side; paint disposed over the first side (Col 7, Ln 9-12); and the second side is substantially free of protrusions (Col 25, Ln 66) and wherein the second side is configured to couple directly to a window well, but does not explicitly disclose that the paint is alkyd paint. However, this would obviously include alkyd paint, as alkyd paint is a common oil-based paint that bonds well to a variety of surfaces, which would be obvious to use to one skilled in the art.

Claim 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemerer et al. in view of Glover et al. (U.S. Patent No. 6,612,091).

Regarding claim 23, Kemerer et al. discloses everything previously mentioned, but does not disclose a layer providing ultraviolet protection. However, Glover et al. discloses a panel (30) having a UV coating (Col 8, Ln 50-53). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify the panel/liner of Kemerer et al. to include a layer that provides protection from the elements including ultraviolet rays, as this would prevent deterioration of the color (Col 8, Ln 50-53).

Regarding claims 24 and 25, Kemerer et al. already modified by Glover et al. discloses everything previously mentioned and further discloses that the liner is adapted to include a plurality of screws disposable therethrough and wherein paint would be disposed over the heads of the plurality of screws.

Regarding claim 26, Kemerer et al. already modified by Glover et al. discloses everything previously mentioned but does not disclose that the single flexible polyurethane sheet is sized to match an associated window well shield. It would have been an obvious matter of design choice to modify the panel/liner of Kemerer et al. already modified by Glover et al. to be sized to match an associated window well shield since such a modification would have involved a mere change in the size of the components and would allow for the panel to be used in any situation. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose,* 105 USPQ 237 (CCPA 1955).

Claim 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rygiel in view of Scott et al. as applied to claim 22 above and in further view of Glover et al. (U.S. Patent No. 6,612,091).

Regarding claim 23, Rygiel already modified by Scott et al. discloses everything previously mentioned, but does not disclose a layer providing ultraviolet protection.

Glover et al. discloses a panel (30) having a UV coating (Col 8, Ln 50-53).

It would have been obvious to one having ordinary skill in the art at the time of invention to modify the panel/liner of Rygiel already modified by Scott et al. to include a layer that provides protection from the elements including ultraviolet rays, as this would prevent deterioration of the color (Col 8, Ln 50-53).

Regarding claims 24 and 25, Rygiel already modified by Scott et al. and Glover et al. discloses everything previously mentioned and further discloses that the liner is adapted to include a plurality of screws disposable therethrough and wherein paint would be disposed over the heads of the plurality of screws.

Regarding claim 26, Rygiel already modified by Scott et al. and Glover et al. discloses everything previously mentioned but does not disclose that the single flexible polyurethane sheet is sized to match an associated window well shield.

It would have been an obvious matter of design choice to modify the panel/liner of Kemerer et al. already modified by Glover et al. to be sized to match an associated window well shield since such a modification would have involved a mere change in the size of the components and would allow for the panel to be used in any situation. A

change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Response to Arguments

Applicant's arguments with respect to claims 1 and 7 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments, see Remarks, filed 10/09/07, with respect to the 112 1st paragraph rejection have been fully considered and are persuasive. The 112 1st paragraph rejection of claim 1 has been withdrawn.

On page 7, Applicant states that claims 1, 7, 21, and 24-25 have been amended to further distinguish the invention over the prior art. However, only claim 1 has been amended.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schultze-Kraft (US 5364672) artificial stone; Nasvik et al. (US 5386963) form liner; Hughes (US Des. D497013S) panel for window well.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINE T. CAJILIG whose telephone number is (571)272-8143. The examiner can normally be reached on Monday - Thursday from 8am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Canfield can be reached on (571) 272-6840. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. T. C./
Examiner, Art Unit 3633
4/09/08

/Robert J Canfield/

Supervisory Patent Examiner, Art Unit 3635